

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

\_\_\_\_\_  
UNITED STATES OF AMERICA,

Plaintiff,

v.

ExxonMobil Corporation,

Defendant.  
\_\_\_\_\_

)  
)  
)  
) Civil Action No. 1:08cv124  
)  
) Judge \_\_\_\_\_  
)  
)  
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)

**CONSENT DECREE**

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

_____	)	
UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	Civil Action No. _____
v.	)	
	)	Judge _____
ExxonMobil Corporation,	)	
	)	
Defendant.	)	
_____	)	

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ExxonMobil Corporation,	)	
	)	
	)	
Defendant.	)	
_____	)	

**CONSENT DECREE**

**I. BACKGROUND**

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607, as amended ("CERCLA"), seeking reimbursement of response costs incurred or to be incurred for response actions taken or to be taken at or in connection with the release or threatened release of hazardous substances at the Big John's Salvage, Hoult Road, Site in Fairmont, Marion County, West Virginia ("the Site").

B. Defendant that has entered into this Consent Decree ("Settling Defendant") does not admit any liability to Plaintiff arising out of the transactions or occurrences alleged in the complaint. The Parties enter into this Consent Decree without any admission or adjudication of any issue of law or fact and without any admission of liability or fault as to any matter arising out

of the pleadings or otherwise.

C. The United States and Settling Defendant agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED, ADJUDGED, AND DECREED:

## **II. JURISDICTION**

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9607 and 9613(b) and also has personal jurisdiction over Settling Defendant. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Defendant waives all objections and defenses that it may have to jurisdiction of the Court or to venue in this District. Settling Defendant shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

## **III. PARTIES BOUND**

2. This Consent Decree is binding upon the United States, and upon Settling Defendant and its successors and assigns. Any change in ownership or corporate or other legal status, including but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Settling Defendant under this Consent Decree.

## **IV. DEFINITIONS**

3. Unless otherwise expressly provided herein, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings

assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

a. "Big John's Salvage Property" for purposes of this Consent Decree, refers to that real property that is identified by the Marion County Tax Assessors Office as tax parcels 24-06-2-0002.0000, 24-06-2-0003.0000, 24-06-2-0007.0001 and 24-06-2-0014.0000 (shown as Parcels 2, 3, 7.1, and 14 on the map attached to this Consent Decree as Appendix A).

b. "Big John's Salvage Property Response Costs" shall mean all costs of "response" as that term is defined by Section 101(25) of CERCLA, 42 U.S.C. § 9601(25) that relate to the Big John's Salvage Property and the Unnamed Tributary #1 and Surrounding Area.

c. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*

d. "Consent Decree" shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any Appendix, this Consent Decree shall control.

e. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

f. "DOJ" shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.

g. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

h. “EPA Hazardous Substance Superfund” shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

i. “Fairmont Coke Works Property,” for purposes of this Consent Decree, refers to that real property that is identified by the Marion County Tax Assessors Office as tax parcels 24-06-2-0001.0000, 24-06-2-0013.0000, 24-06-3-0031.0000, 24-06-3-0079.0000, 24-06-3-0086.0000, 24-06-3-0087.0000, 24-06-3-0088.0000, 24-06-3-0089.0000, 24-06-4-0001.0000, 24-06-4-0001.0001, 24-06-5-0002.0001, and 24-06-500-0012.0000, except those portions of these tax parcels that are within the area that is defined in this Consent Decree as the Unnamed Tributary #1 and Surrounding Area.

j. “Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

k. “Monongahela River” refers to the water body, including its banks and sediments, into which the Unnamed Tributary # 1 (as shown on the map attached as Appendix A) flows.

l. “Paragraph” shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.

m. “Parties” shall mean the United States and Settling Defendant.

n. “Plaintiff” shall mean the United States.

o. “RCRA” shall mean the Solid Waste Disposal Act, 42 U.S.C. § 6901, *et seq.*

(also known as the Resource Conservation and Recovery Act).

p. "Section" shall mean a portion of this Consent Decree identified by a Roman numeral.

q. "Settling Defendant" shall means ExxonMobil and its predecessors, subsidiaries, and affiliates.

r. "Site" shall mean the Big John's Salvage, Hoult Road Superfund Site, encompassing approximately 38 acres, located in Fairmont, Marion County, West Virginia.

s. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

t. "Unnamed Tributary #1 and Surrounding Area" shall mean the area between the Big John's Salvage Property boundary and the surveyed line south of the watercourse denoted "Northern Drainage Way," "Unnamed Tributary No. 1," and "Pond," all as depicted on the "Big John Salvage - Hoult Road Site" map prepared by the United States Army Corps of Engineers, Huntington District on March 15, 2006, attached as Appendix A. This area includes all portions of the watercourses north of the surveyed line, but no portion of the Monongahela River.

#### **V. STATEMENT OF PURPOSE**

4. By entering into this Consent Decree, the mutual objective of the Parties is for Settling Defendant to make a cash payment to address its potential liability for Big John's Salvage Property Response Costs as provided in the Covenant Not to Sue by Plaintiff in Section VIII, and subject to the Reservations of Rights by United States in Section IX.

#### **VI. PAYMENT OF RESPONSE COSTS**

5. Within 30 days of entry of this Consent Decree, Settling Defendant shall pay to the

EPA Hazardous Substance Superfund \$3,000,000 for Big John's Salvage Property Response Costs.

6. Payment by Settling Defendant shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with EFT instructions provided to Settling Defendant by the Financial Litigation Unit of the U.S. Attorney's Office in the Northern District of West Virginia following lodging of the Consent Decree.

7. At the time of payment, Settling Defendant shall also send notice that payment has been made to EPA and DOJ in accordance with Section XIV (Notices and Submissions). Such notice shall reference the EPA Region and Site-Spill ID Number 0371, DOJ Case Number 90-11-3-08499 and the Civil Action Number.

8. The total amount to be paid pursuant to Paragraph 5 shall be deposited in the Big John's Salvage, Hoult Road Superfund Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

**VII. FAILURE TO COMPLY WITH REQUIREMENTS OF CONSENT DECREE**

9. Interest on Late Payments. If Settling Defendant fails to make any payment under Paragraph 5 by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment.

10. Stipulated Penalty.

a. If any amounts due under Paragraph 5 are not paid by the required due date, Settling Defendant shall be in violation of this Consent Decree and shall pay, as a stipulated



penalty, in addition to the interest required by Paragraph 9, \$2,500 per violation per day that such payment is late.

b. Stipulated penalties are due and payable within 30 days of the date of the demand for payment of the penalties by EPA . All payments to EPA under this Paragraph shall be identified as “stipulated penalties” and shall be made by certified or cashier’s check made payable to “EPA Hazardous Substance Superfund.” The check, or a letter accompanying the check, shall reference the name and address of the party(ies) making payment, the Site name, the EPA Region and Site Spill ID Number 0371, DOJ Case Number 90-11-3-08499, and the Civil Action Number. Settling Defendant shall send the check (and any accompanying letter) to:

U.S. Environmental Protection Agency, Region III  
Attention: Superfund Accounting  
P.O. Box 360515  
Pittsburgh, PA 15251-6515

c. At the time of each payment, Settling Defendant shall also send notice that such payment has been made to EPA and DOJ in accordance with Section XIV (Notices and Submissions). Such notice shall reference the EPA Region and Site/Spill ID Number 0371, DOJ Case Number 90-11-3-08499, and the Civil Action Number.

d. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Defendant of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

11. If the United States brings an action to enforce this Consent Decree, Settling

Defendant shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

12. Payments made under this Section shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of Settling Defendant's failure to comply with the requirements of this Consent Decree.

13. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse Settling Defendant from payment as required by Section VI or from performance of any other requirements of this Consent Decree.

#### **VIII. COVENANT NOT TO SUE BY PLAINTIFF**

14. Covenant Not to Sue by United States relating to the Big John's Salvage Property, and the Unnamed Tributary #1 and Surrounding Area. Except as specifically provided in Section IX (Reservation of Rights by United States), the United States covenants not to sue or to take administrative action against Settling Defendant pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), and Section 7003 of RCRA, 42 U.S.C. § 6973, with regard to the Big John's Salvage Property, the Unnamed Tributary #1 and Surrounding Area, and the location of any hazardous substances, pollutants or contaminants that migrated from the Big John's Salvage Property. With respect to present and future liability, this covenant not to sue shall take effect upon receipt by EPA of all payments required by Section VI (Payment of Response Costs) and any amount due under Section VII (Failure to Comply with Requirements of Consent Decree). This covenant not to sue is conditioned upon the satisfactory performance

by Settling Defendant of its obligations under this Consent Decree. This covenant not to sue extends only to Settling Defendant and does not extend to any other person.

**IX. RESERVATION OF RIGHTS BY UNITED STATES**

15. Reservation of Rights with regard to the Big John's Salvage Property. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to all matters relating to the Big John's Salvage Property not expressly included within the Covenant Not to Sue by the United States in Paragraph 14. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendant with respect to:

- a. liability for failure of Settling Defendant to meet a requirement of this Consent Decree;
- b. criminal liability;
- c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- d. liability based upon Settling Defendant's ownership or operation of the Big John's Salvage Property, or upon Settling Defendant's transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal, of a hazardous substance or a hazardous waste at or in connection with the Big John's Salvage Property, after signature of this Consent Decree by Settling Defendant;
- e. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Big John's Salvage Property and the Unnamed Tributary #1 and Surrounding Area, unless the hazardous substance,

pollutant, or contaminant migrated from the Big John's Salvage Property;

f. liability with respect to the migration of any hazardous substances, pollutants or contaminants into the Monongahela River;

g. liability for any claim for response costs for hazardous substances that have migrated from the Fairmont Coke Works Property, unless the hazardous substances are presently located on or under the Big John's Salvage Property and/or the Unnamed Tributary #1 and Surrounding Area; and

h. liability arising from the release or threat of release of hazardous substances on or under the Fairmont Coke Works Property.

16. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendant (1) to perform further response actions relating to the Big John's Salvage Property or (2) reimburse the United States for additional costs of response, if:

(i) EPA determines subsequent to entry of this Consent Decree that activities conducted by Settling Defendant caused or contributed to contamination at the Big John's Salvage Property, and such activities were known by Settling Defendant, but were not known by or disclosed to EPA at the time of the parties' settlement negotiations related to this Consent Decree; or

(ii) information, previously unknown to EPA, is discovered that reveals that Settling Defendant disposed of hazardous substances, within the meaning of 42 U.S.C. § 9601(14), hazardous wastes, within the meaning of 42 U.S.C. § 6903(5), or arranged for the

disposal or treatment of hazardous substances and/or hazardous wastes at the Big John's Salvage Property; however, this provision shall not apply to any useful product Settling Defendant may have sold to any owner of or operator at the Big John's Salvage Property prior to entry of this Consent Decree; or

(iii) responses provided by Settling Defendant to EPA Section 104(e) requests related to the sale by Settling Defendant to any past owner of or operator at the Big John's Salvage Property of any product, which was used by such owner or operator at the Big John's Salvage Property, are determined by EPA after entry of the Consent Decree to be materially incorrect.

For purposes of Paragraph 16, the information and conditions known by EPA at the time of entry of the Consent Decree by the Court shall include documentation supporting this Consent Decree and any information exchanges between the EPA and Settling Defendant which were provided as background information during the parties' settlement negotiations.

#### **X. COVENANT NOT TO SUE BY SETTLING DEFENDANT**

17. Settling Defendant covenants not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Big John's Salvage Property or this Consent Decree, including but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at or in connection with the Big John's Salvage Property, including any claim under the United States Constitution, the Tucker

Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Big John's Salvage Property.

Except as provided in Paragraph 22 (Waiver of Claim-Splitting Defenses), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraph 15 (c) - (e), but only to the extent that Settling Defendant's claims arise from the same response action or response costs that the United States is seeking pursuant to the applicable reservation.

18. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

#### **XI. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION**

19. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Decree may have under applicable law. The Parties expressly reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which they may have with respect to any matter, transaction, or occurrence relating in any way to the Big John's Salvage Property against any person not a Party hereto.

20. The Parties agree, and by entering this Consent Decree this Court finds, that Settling Defendant is entitled, as of the date of entry of this Consent Decree, to protection from

contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for “matters addressed” in this Consent Decree. The “matters addressed” in this Consent Decree are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Big John’s Salvage Property, the Unnamed Tributary #1 and Surrounding Area or the location of any hazardous substances, pollutants or contaminants that migrated from the Big John’s Salvage Property by the United States or any other person. The “matters addressed” in this Consent Decree do not include those response costs or response actions as to which the United States has reserved its rights under this Consent Decree (except for claims for failure to comply with this Decree), in the event that the United States asserts rights against Settling Defendant coming within the scope of such reservations.

21. Settling Defendant agrees that, with respect to any suit or claim for contribution brought by it for matters related to this Consent Decree, it will notify EPA and DOJ in writing no later than 60 days prior to the initiation of such suit or claim. Settling Defendant also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Consent Decree, it will notify EPA and DOJ in writing within 10 days of service of the complaint or claim upon it. In addition, Settling Defendant shall notify EPA and DOJ within 10 days of service or receipt of any Motion for Summary Judgment, and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

22. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Big John’s Salvage Property, Settling Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or

other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by Plaintiff set forth in Section VIII.

## **XII. ACCESS TO INFORMATION**

23. Settling Defendant shall provide to EPA, upon request, copies of all records, reports, or information (hereinafter referred to as "records") within its possession or control or that of its contractors or agents relating to activities at the Site, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Site.

### **24. Confidential Business Information and Privileged Documents.**

a. Settling Defendant may assert business confidentiality claims covering part or all of the records submitted to Plaintiff under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R.

2.203(b). Records determined to be confidential by EPA will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies records when they are submitted to EPA, or if EPA has notified Settling Defendant that the records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such records without further notice to Settling Defendant.

b. Settling Defendant may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendant asserts such a privilege in lieu of providing records, they shall provide Plaintiff with the following:



1) the title of the record; 2) the date of the record; 3) the name, title, affiliation (*e.g.*, company or firm), and address of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to EPA in redacted form to mask the privileged information only. Settling Parties shall retain all records that they claim to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Parties' favor. However, no records created or generated pursuant to the requirements of this or any other settlement with the United States shall be withheld on the grounds that they are privileged.

25. No claim of confidentiality shall be made with respect to any data, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other records evidencing conditions at or around the Site.

### **XIII. RETENTION OF RECORDS**

26. Until 10 years after the entry of this Consent Decree, Settling Defendant shall preserve and retain all records now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or the liability of any person for response actions or response costs at or in connection with the Site, regardless of any corporate retention policy to the contrary.

27. After the conclusion of the 10-year document retention period in the preceding paragraph, Settling Defendant shall notify EPA and DOJ at least 90 days prior to the destruction of any records, and, upon request by EPA or DOJ, Settling Defendant shall deliver any such records to EPA. Settling Defendant may assert that certain records are privileged under the attorney-client

privilege or any other privilege recognized by federal law. If Settling Defendant asserts such a privilege, they shall provide Plaintiff with the following: 1) the title of the record; 2) the date of the record; 3) the name title, affiliation (*e.g.*, company or firm), and address of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to EPA in redacted form to mask the privileged information only.

Settling Parties shall retain all records that they claim to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Parties' favor. However, no records created or generated pursuant to the requirements of this or any other settlement with the United States shall be withheld on the grounds that they are privileged.

28. Settling Defendant hereby certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or information relating to its potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

#### **XIV. NOTICES AND SUBMISSIONS**

29. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to

the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, DOJ, and Settling Defendant, respectively.

As to the United States:

As to DOJ:

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice (DJ 90-11-3-08499)  
P.O. Box 7611  
Washington, D.C. 20044-7611

As to EPA:

Bonnie Pugh Winkler (3RC44)  
Sr. Asst. Regional Counsel  
U.S. EPA Region III  
1650 Arch Street  
Philadelphia, PA 19103

Eric Newman (3HS23)  
Remedial Program Manager  
U.S. EPA Region III  
1650 Arch Street  
Philadelphia, PA 19103

As to Settling Defendant:

Mark A. Zuschek  
Office of the General Counsel  
ExxonMobil Corporation  
3225 Gallows Road  
Fairfax, VA 22037-0001

Zane K. Bolen  
ExxonMobil Refining & Supply Co.  
16945 Northchase Drive  
CORP-GP4-527  
Houston, TX 77060

Steven M. Jawetz  
Beveridge & Diamond, P.C.  
1350 I Street, N.W., Suite 700  
Washington, DC 20005

**XV. RETENTION OF JURISDICTION**

30. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

**XVI. INTEGRATION/APPENDIX**

31. This Consent Decree and its appendix constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following appendix is attached to and incorporated into this Consent Decree:

“Appendix A” is the map depicting the Unnamed Tributary #1 and Surrounding Area.

**XVII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

32. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), 28 C.F.R. § 50.7, and Section 7003(d) of RCRA, 42 U.S.C. § 6973(d). The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendant consents to the entry of this Consent Decree without further notice.

33. If for any reason this Court should decline to approve this Consent Decree in the form

presented, this agreement is voidable at the sole discretion of any party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

#### **XVIII. SIGNATORIES/SERVICE**

34. Each undersigned representative of Settling Defendant to this Consent Decree and the Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice certifies that he is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

35. Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Settling Defendant in writing that it no longer supports entry of the Consent Decree.

36. Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendant hereby agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons.

#### **XIX. FINAL JUDGMENT**

37. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between and among the United States and Settling Defendant.

The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2 \_\_\_\_.

\_\_\_\_\_  
United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. ExxonMobil Corporation, et al., relating to the Big John's Salvage Superfund Site.

FOR THE UNITED STATES OF AMERICA:

Date: 3/24/08

\_\_\_\_\_  
RONALD J. TENPAS  
Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice  
Washington, D.C. 20530

Date: 5/23/08

\_\_\_\_\_  
NATHANIEL DOUGLAS  
Senior Attorney  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, DC 20044-7611

Date: \_\_\_\_\_

\_\_\_\_\_  
Assistant United States Attorney  
1125 Chapline Street  
Wheeling, WV 26003

FOR THE ENVIRONMENTAL PROTECTION AGENCY:

DEC 20 2007

Date: \_\_\_\_\_

\_\_\_\_\_  
DONALD S. WELSH  
Regional Administrator  
Region III, U.S. Environmental Protection Agency  
1650 Arch Street, Philadelphia, PA 19103-2029

Date: 11/15/07

\_\_\_\_\_  
WILLIAM C. EARLY  
Regional Counsel, Region III  
U.S. Environmental Protection Agency  
1650 Arch Street, Philadelphia, PA 19103-2029

Date: 10/29/07

\_\_\_\_\_  
BONNIE PUGH WINKLER  
Regional Counsel, Region III  
U.S. Environmental Protection Agency  
1650 Arch Street, Philadelphia, PA 19103-2029



THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. ExxonMobil Corporation, et al., relating to the Big John's Salvage Superfund Site, .

FOR DEFENDANTS:

Date: 03/22/07

  
[Names and address of Defendant's signatories]

Andrew Warrell

c/o Mark A. Zuschek, Esq.

ExxonMobil Corporation

3225 Gallows Road, Fairfax, VA 22037

Agent Authorized to Accept Service on Behalf of Above-signed Party: (all service to go to agent)

Name: ^ Corporation Service Company

Title: Registered Agent

Address: 209 West Washington Street  
Charleston, WV 25302

## **APPENDIX A**

### **MAP OF BIG JOHN'S SALVAGE - HOULT ROAD SITE**

**(Reduced Version of the Appendix A Map Attached to the Original  
Consent Decree)**

